SUPREME COURT, U. S

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-291

KATHERINE MARIE AANESTAD, as Administratrix of the Estate of RICHARD EARNEST SYKES, Deceased,

Petitioner,

vs.

BEECH AIRCRAFT CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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A LAW CORPORATION

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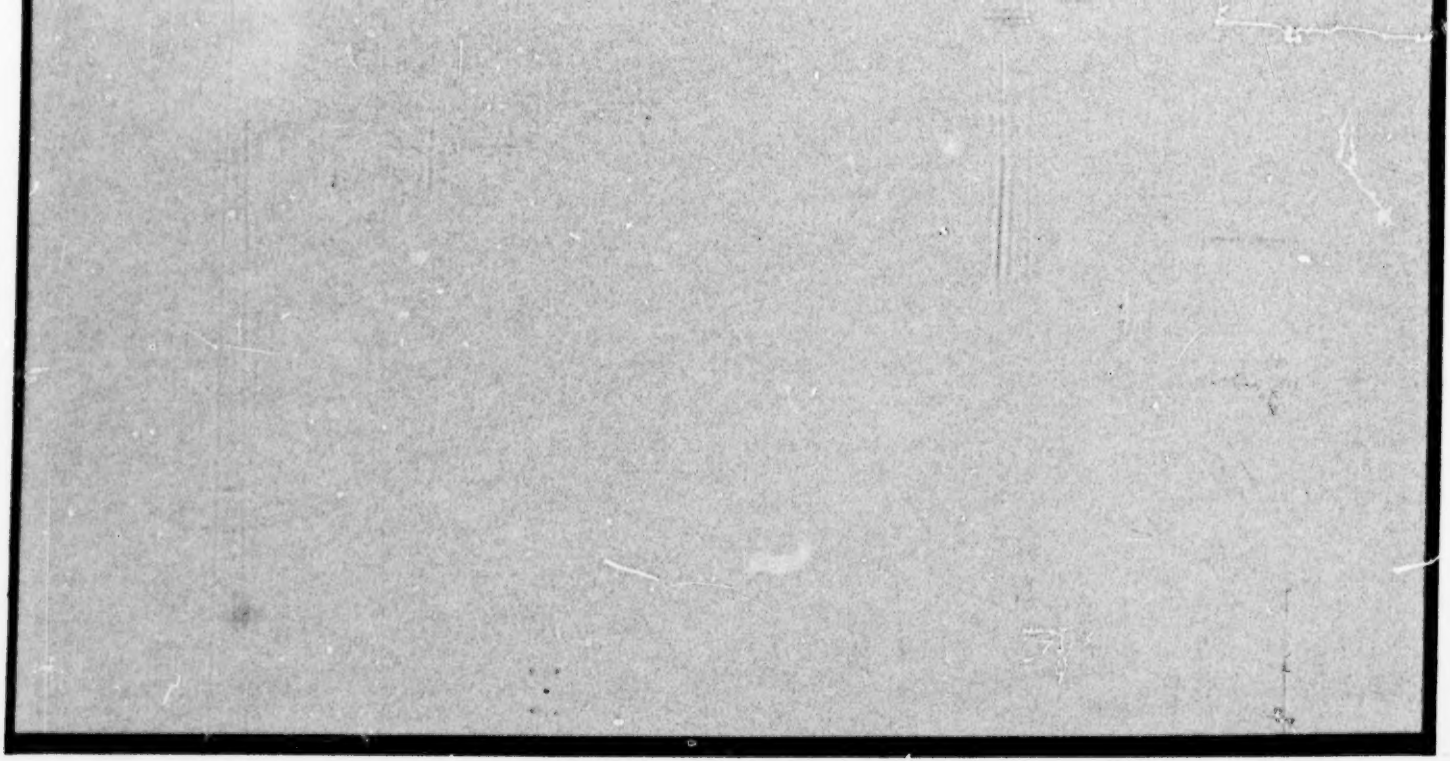

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IN THE

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KATHERINE MARIE AANESTADT, as Administratrix of the Estate of RICHARD EARNEST SYKES, Deceased,

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Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

A. OPINIONS BELOW

On July 17, 1973, the District Court of the Central District of California entered an order dismissing petitioner's complaint against respondent on the grounds that there

was insufficient basis in which to maintain personal jurisdiction over the respondent. A written order of dismissal was issued which is attached hereto as Appendix "A". The Ninth Circuit Court of Appeals, by memorandum decision (unpublished), affirmed the order of dismissal and a copy of the opinion is attached hereto as Appendix "B". On July 16, 1974, the Ninth Circuit denied petitioner's petition for rehearing. A copy of the order of denial is attached as Appendix "C".

B. JURISDICTION

Jurisdiction of this Court to review by certiorari the afore mentioned orders believed to be confirmed by 28 U.S.C. §1241(1).

C. QUESTION PRESENTED FOR REVIEW

Petitioner addresses to this Court two issues for review, which involve the permissible limits of personal jurisdiction over non-resident defendants, in situations where the cause of action is not an outgrowth of the activities within the forum state. Specifically: (1) whether

the due process clause requires that the cause of action be an outgrowth of the non-resident's activities within the forum state; and (2) whether the presence of wholly owned subsidiaries within the forum state provide a sufficient basis for the assumption of personal jurisdiction.

D. STATUTES INVOLVED

California Code of Civil Procedure §410.10 states as follows:

> "A court of this State may exercise jurisdiction on any basis, not inconsistent with the Constitution of this State or the United States."

E. STATEMENT OF THE CASE

On January 18, 1973, appellant as a duly appointed Administratrix of the Estate of Richard Earnest Sykes filed a complaint in the Superior Court of California, in and for the County of Los Angeles, alleging that the wrongful death of Sykes was caused by respondent Beech. Contained within the complaint were allegations that Beech had manufactured an aircraft that was defective and that the alleged defect proximately

caused the aircraft in which Sykes was a passenger to crash on January 22, 1972 near the town of Las Cruces, New Mexico.

On or about February 22, 1973, Beech filed a petition and bond for removal pursuant to 28 U.S.C. §1441 et seq. and thereby removed this case to the United States District Court for the Central District of California, where it was assigned to District Judge David W. Williams.

On March 27, 1973, respondent filed a motion to dismiss petitioner's complaint, alleging among other things that the District Court lacked personal jurisdiction over defendant Beech.

Following notice of the motion, petitioner's attorneys initiated discovery against defendant Beech, which included a set of interrogatories to Beech and the taking of the deposition of J. A. Elliott, a Vice-President and Director of Beech.

On July 9, 1973, respondent's motion to dismiss was orally argued before the Honorable David W. Williams and on July 17, 1973, Judge Williams dismissed the complaint in a 4-page written order.

From the pretrial discovery that was conducted, the following information was obtained from answers to interrogatories submitted to the Respondent:

1. Beech Aircraft Corporation has the following wholly owned subsidiaries:

(a) Beech Acceptance Corporation, Inc.

(b) Beechcraft - Hawker Corporation.

(c) Beech International Sales Corporation.

(d) Beech Holdings, Inc. which has the following subsidiaries:

(1) United Beechcraft Inc.

(2) ? Line Services, Inc.

(3) Denver Beechcraft, Inc.

(4) Houston Beechcraft, Inc.

(5) Beechcraft East, Inc.

(6) Indiana Beechcraft, Inc.

(7) Beechcraft West, which has divisions at Van Nuys, Fresno and Hayward, California.

2. Beechcraft West was incorporated in California as was Mission Beechcraft, a wholly owned subsidiary of Beechcraft West. Respondent owns 100% of the stock of Beech Holdings Company which in turn owns 100% of the stock of each of its subsidiaries.

3. Beech Aircraft Corporation and its subsidiaries have interlocking and common officers and directors. The officers and directors serving and employed by the various subsidiaries are all paid by Beech Aircraft Corporation.

4. Numerous Beech Aircraft Corporation employees have come to California on corporate business.

5. Beech Aircraft Corporation has a representative residing in Camarillo, California.

6. Beech Aircraft Corporation has employees whose responsibility requires them to come to California.

7. The defendant services and handles warranty claims arising in the State of California. The approximate dollar value for these warranty claims from June 1971 to May 1973 is over $281,000.00.

8. The defendant mails service instructions to dealers and distributors in California.

9. The defendant has extensively advised its products in magazines of national distribution, in local Yellow Pages for listing in California cities. These expenditures are well in excess of $100,000.00.

10. The defendant through its subsidiaries sold over $4,000,000.00 of aircraft in California fiscal year 1971 and over $6,000,000.00 worth in fiscal year 1972.

11. The defendant sold replacement parts in the State of California through its subsidiaries in the amount of $605,000.00 in 1971 and in excess of $861,000.00 in 1972.

12. The defendant purchased its components from suppliers located in the State of California.

13. Beech has received credit from the Bank of America located in Los Angeles, California in excess of $2,000,000.00.

14. The defendant has on deposit with the Bank of America in Los Angeles, California an excess of $73,000.00 as of May 30, 1973.

15. Beech Aircraft Corp. prepared a consolidated balance sheet embracing the fiscal transactions of the parent and all the above mentioned subsidiary companies, drawing income for the fiscal year of 1971 in the amount of $146,000,000.00 and income for the fiscal year of 1972 in excess of $178,000,000.00.

16. All the above mentioned subsidiaries are mentioned on performance reports to stockholders which reports are sent into the State of California.

In addition to the foregoing, a deposition of John Elliot was taken and revealed the following:

1. Mr. Elliot is the Vice-President, Treasurer and Director of Beech Aircraft Corporation. He resides in Wichita, Kansas and was in California at the time of his deposition in order to visit with the Bank of America and with Beech distributors.

Mr. Elliot testified that Beech borrows money from the Bank of America, and that Beech Aircraft Corporation owns all the outstanding shares of Beech Holdings, Inc.

Mr. Elliot is a director of Beech Holdings, Inc., and that Beech Holdings, Inc. owns all the outstanding shares of Beechcraft, West, a corporation, with its principal place of business in the City of Van Nuys, County of Los Angeles. Mr. Elliot is also the secretary-treasurer of Beech Holdings, Inc. The prime purpose of Beechcraft subsidiaries is to sell Beechcraft products and service them in the State of California. Mr. Elliot is on salary by the Beech Aircraft Corporation and was being paid for his time in California, as well as being reimbursed for his travel expenses. Mr. Elliot testified that Beech Aircraft Corporation has service representatives which come to California on business.

The Beech Aircraft Corporation manufactures aircraft, which are sold to dealers and distributors, as well as parts for repair. In addition, Beech Aircraft Corporation publishes shop manuals, overhaul manuals and service manuals used by dealers, distributors and mechanics in California and elsewhere.

Beech Aircraft Corporation distributes service letters and service bulletins in

the State of California.

Beech Aircraft Corporation publishes the purchase agreements for new aircraft that contain the warranty agreement designed by them which is partly the purchase agreement and is used for aircraft sold in California.

Beech Aircraft Corporation has a wholly owned subsidiary Beech Acceptance Corporation used for the financing of new Beech Aircraft airplane sales in the State of California and elsewhere.

Mr. Elliot is also the secretary of Beechcraft West. (Mr. Elliot is an officer and/or director of Beechcraft West, Beech Holding Company, Inc. and Beech Aircraft Corporation.)

When Mr. Elliot is fulfilling his responsibility as an officer or director of certain subsidiary corporations, he is nevertheless paid by Beech Aircraft Corporation, except when he acts as director, then he is paid director fees for the subsidiary.

Beech Aircraft Corporation advertises their products in magazines of national

distribution which magazines are sold, distributed in the State of California.

Also as part of the record is testimony from one Michael Gordon, given under oath at a prior trial of another matter (Pease et al. v. Beech Aircraft Corp. et al.).

Mr. Gordon testified that he was employed by Beech Aircraft Corporation. His position was Vice-President - General Manager of Beechcraft West, subsidiary of Beech Aircraft Corporation. He had worked in California at the Van Nuys location. That he goes back to Wichita for quarterly meetings of the Board of Directors of Beechcraft West. Beechcraft West is a wholly owned subsidiary of Beech Aircraft Corporation. That a Mr. Wyman Henry is a member of the Board of Directors of Beech Aircraft Corporation, and is also President of Beech Holdings, a subsidiary of Beech Aircraft Corporation. Beechcraft West is one of the leading sellers of Beech Aircraft Products in the nation.

F. FEDERAL JURISDICTION

Federal jurisdiction is based upon Diversity of Citizenship and a claim in excess of $10,000. 28 U.S.C. §1332.

REASONS FOR GRANTING THE WRIT

I

THE NINTH CIRCUIT'S DECISION IN EFFECT HOLDS THAT WHEN THERE ARE "MINIMAL CONTACTS" WITH A FORUM STATE, THE CAUSE OF ACTION MUST ARISE OUT OF THAT CONDUCT PERFORMED IN THE FORUM STATE IN ORDER TO SATISFY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. IN SO HOLDING THE NINTH CIRCUIT'S DECISION IS IN DIRECT CONFLICT WITH A PRIOR RULING OF THIS COURT

Beech Aircraft Corporation was held not to be subject to the personal jurisdiction of the courts of California, because the cause of action did not arise out of any activities performed within California. Relying on L.D. Reeder Contractors v. Higgins Industries, 256 F.2d 768 (9th Cir. 1959), and the three prong test contained therein, the Ninth Circuit in effect held

that before there can be "minimum contact" with the forum state, the cause of action must be related to the non-resident's business activities within the forum.[1/]

This decision, is in direct conflict with Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 96 L.Ed. 485, 72 S.Ct. 413 (1952). Perkins held correctly that the Fourteenth Amendment does not require a cause of action be in any way related to the business activities of the defendant performed within the forum state. Rather decision on whether the assumption of jurisdiction over the non-resident defendant does or does not offend traditional notions of fair play and substantial justice, depends upon an analysis of the quality and nature of the activities of the non-resident corporation in relation to the fair and orderly administration of the laws which it was the purpose of the due process

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1/ When petitioner speaks of "minimum contacts" she refers to the test as presently formulated by the three leading decisions of this Court, Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 855 U.S. 220 (1952) and International Shoe v. Washington, 326 U.S. 310 (1945).

clause to insure.

The fact that the Ninth Circuit completely disregarded the Perkins decision, is demonstrated by the following exerpt from the decision appended to this Petition:

> "...although Perkins v. Benquet Consol. Mining Co., (citations omitted) upheld jurisdiction where the cause of action was not an outgrowth of the activity relied upon to establish minimum contacts, Reeder limited the Perkins holding to the unusual facts there presented."

There is absolutely nothing contained within the body of the Perkins decision which would lead any persons to the conclusion that its holding was peculiar to the facts presented therein. Furthermore there has not been any further word from this Court that would in any way lead one to suspect Perkins was not a correct statement of the law relating to the assumption of jurisdiction over non-resident corporations under any circumstances. Clearly what the Ninth Circuit did relying on Reeder, supra,

is to elevate the constitutional dimensions that the cause of action must arise out of the business activity performed within the forum state, before the due process clause will be satisfied. Instead as the Perkins court correctly pointed out, the focal point should be on the nature and qualities of the non-resident's activities within the forum state, not on where the accident occurred.

Clearly this case demonstrates dramatically the error and the room for potential error, that the preoccupation with where the cause of action arose can have. Rather than make a full finding on the extent and quality of business activity conducted by the non-resident corporation within the forum state, the court simply looks to see where the action arose; and if non-forum related by using the Reeder test jurisdiction is forbidden by the due process clause. Such a mechanical means of decision Petitioners submit, was never contemplated by this Court.

As a sub-part of this first issue, this case presents to the court an opportunity to discuss a matter that was apparently

left open by the court in deciding Perkins. That is whether Perkins is reserved to situations where as a foundational fact it is determined that the non-resident corporation does more than "Minimal" business activity and in fact does "continuous and substantial" business activity within the forum state. This question was raised in the annotation following the cited Perkins decision in 96 L.Ed. 495 et seq. Noting that earlier decisions have indicated that more contacts were necessary on non-forum related cause of action, Louisville and N.R. Co. v. Chaters, 279 U.S. 320, 73 L.Ed. 711, 49 S.Ct. 329 (1929), the annotation then expresses the opinion that the quantum of business activity should play no part in the decision (96 L.Ed. 496).

The distinction between pervasive or substantial and continuous activity and minimal business activity and the relationship to whether the cause of action is forum related to those activities, has been the subject of several California decisions. See Fisher Governor Co. v. Superior Court, 53 Cal.2d 222, 1 Cal.Rptr. 1, 347 P.2d 1 (1959); Jeter v. Austin Trailer Equipment

Co., 122 Cal.App.2d 376, 365 P.2d 130 (1953); Koninklijke L.M. v. Superior Court 107 Cal.App.2d 495, 237 P.2d 297 (1951). This question has also been the subject of a previous Ninth Circuit decision, Levecke v. Gridsedricke Western Brewery Co., 23 F.2d 772 (1956). In each of the aforementioned decisions, the reviewing court was of the opinion that jurisdiction could be maintained on a non-forum cause of action, if the defendants forum related activities were continuous and substantial.

The decision of the Ninth Circuit under review here, by footnote, emphasizes that Reeder, supra, and the requirement that the cause of action be forum related, is relied upon because of the courts implicit finding that there were "minimal" activities as opposed to a continuous and substantial business activity performed by the respondent within the boundaries of California.

Petitioners respectfully submit that whether Perkins is limited to facts which demonstrate a non-resident's substantial connection with the forum state, or is equally applicable to situations where

there are only minimal activities conducted within the forum state, is a question that is of significant importance, and could be answered if Petitioner's Writ is granted.

II

WHETHER THE ACTIVITIES OF WHOLLY SUBSIDIARY WITHIN THE FORUM STATE PROVIDE SUFFICIENT CONTACTS SO THAT THE ASSUMPTION OF JURISDICTION OVER A NON-RESIDENT PARENT CORPORATION WOULD NOT OFFEND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, PRESENTS AN IMPORTANT FEDERAL QUESTION

The Ninth Circuit's decision, in effect, held that the only business conducted by the respondent within the boundaries of California, was conducted through its wholly owned subsidiaries.[2/]

Petition does not concede that the sole activities performed by the respondent

2/ Petitioner took the position that the activities of the subsidiary corporation in addition to the activities of the parent Beech, established the requisite minimum contacts, so as to satisfy the due process clause. The local activities of the parent, seems to have been entirely overlooked by both the Ninth Circuit and the District Court.

within California, are conducted through subsidiary corporations. However, assuming the District Court (and the Court of Appeals) were correct in that finding, the question of under what circumstances the presence of a subsidiary corporation located in a forum state's boundaries, will subject apparent to jurisdiction, is a subject that presents a substantial federal question.

The facts unquestionably show that the subsidiaries located in California have interlocking officers and directors with the parent Beech. Beech exerts substantial control over the subsidiaries with respect to the marketing of Beech aircraft in the state of California. Finally, as a direct result of its subsidiaries activities within California, the parent Beech derives a substantial amount of income and revenue.

Relying on the decision of this Court, of Cannon Mfg. Co. v. Cudahy Packing Corp., 267 U.S. 333 (1925), courts have generally held absent certain distinguishing criteria, the mere presence of a wholly owned subsidiary does not confer upon the state jurisdiction over a non-resident parent. Farkas

v. Texas Instruments, Inc., 429 F.2d 849 (1st Cir. 1970); Hayashi v. Sunshine Garden Products, Inc., 285 F. Supp. 632; (W.D. Wash. 1967), aff'd sub nom. Hayashi v. Redwing Peat Corp., 396 F.2d 13 (9th Cir. 1968).

There are however, instances where the presence of a subsidiary, will confer jurisdiction of a forum over a non-resident parent, such as: 1. Where the parent causes a sub to act and that action causes injury or damage in the forum state; Massey V. Ferguson Ltd. v. Intermountain Ford Tractor Sales Co. (10th Cir. 1963), 325 F.2d 713, cert. denied, 377 U.S. 931 (1963); 2. Where the parent so dominates and controls the subsidiary so as to disregard its corporates' existence; Mace v. Orange-Crush Co. (4th Cir. 1938), 99 F.2d 675; State ex rel. Grinnell Co. v. MacPherson (1957) 62 N.M. 308, 309 P.2d 981, cert. denied, 355 U.S. 825 (1957).

Furthermore it appears that New York courts have gone so far as to assume jurisdiction over parents simply because the subsidiary corporation is present within the boundaries of New York, and even though

the formal separateness of the parent and the sub have been carefully maintained. See Taca International Airlines v. Rolls-Royce of England, 15 N.Y.2d 97, 204 N.E.2d 329 (1965); Rabinowitz v. Kaiser-Fraser Corp., 302 N.Y. 892, 100 N.E.2d 177 (1951).

While the Ninth Circuit's decision herein does not address itself to situations wherein a subsidiary's presence will confer jurisdiction over the parent, that is because it found that the cause of action was not related to any forum activity, either that of the respondent or its subsidiary. The issue of whether minimum contacts require that the action be related to some activities conducted within the forum, is of course challenged by petitioners in the first part of this Petition. If on the basis of Perkins, supra, the Ninth Circuit erred in its holding, then petitioners respectfully suggest that this Court reconsider its holding in Cannon, supra, and decide what if any, constitutional restrictions are imposed upon a state seeking to exert jurisdiction over a non-resident parent whose wholly owned subsidiary is in fact located within the

forum state.

Cannon was decided prior to International Shoe Co. v. Washington, 326 U.S. 310 (1945). As such, Cannon was decided on non constitutional grounds and instead the decision rested on concepts of "presence" as set forth in Pennoyer v. Neff, 95 U.S. 714 (1877). Petitioners suggest, as has been stated in one California decision, that if a state should by appropriate legislation confer upon its course jurisdiction over a parent corporation who maintains a wholly owned subsidiary within the state's boundaries, that such a legislation would probably withstand constitutional muster. As stated in Empire Steel Corp. v. Superior Court, 56 Cal.2d 823 (1961) at p. 831:

> "...Also Cannon was not decided on the basis that due process limitation on the assertion of the jurisdiction by a court,[3/] and there is suggestion that a state or federal statute providing for jurisdiction over a parent corporation because of 'presence' of a subsidiary would be upheld. (267 U.S. 336; C.104 U.Pa. L. Rev. 381,

405). It therefore appears that no federal due process objection would arise really to hold that under Code of Civil Procedure section 411 subdivision 2, a forum parent corporation could be subjected to the jurisdictions of our court on the basis of activities of the California subsidiary (see Cannon Mfg. Co. v. Cudahy Co., supra. 267 U.S. 333, 336) ...."

....

Court's footnote 3/ "In setting forth the issue there presented for decision, the court stated: 'the obstacle insisted upon is that the [lower] court lacked jurisdiction because the defendant [parent] a forum corporation, was not within the State. No question of the constitutional powers of the State, of the Federal government is directly presented.' (267 U.S. 336, emphasis added). The issue in the Cannon case then, would appear to have turned upon application of the traditional doctrines

governing assertion of jurisdiction, set forth in such cases as Pennoyer v. Neff, 95 U.S. 714, 722, 24 L.Ed. 565."

There is no question but that California now has conferred the maximum amount of power upon its court as allowed by the due process clause of the Fourteenth Amendment. (See C.C.P. §410.10 cited herein.) The question presented is whether, as the Empire court speculates, the mere presence of wholly owned subsidiaries will confer jurisdiction over the non-resident parent and not be violative of due process. As the facts of this case demonstrate, given the control and the benefits derived by the parent, it would seem that such a basis for jurisdiction would not violate traditional notions of fair play and substantial justice, and would as such comply with the letter and spirit of the Fourteenth Amendment. Therefore if this Court grants certiorari, we respectfully urge the court to hold that the presence of respondent's wholly owned subsidiaries within California provide a proper basis for jurisdiction, regardless of the amount of business

activity conducted by the parent itself within the State of California.

CONCLUSION

This case presents to this Court an opportunity to adjudicate important questions concerning personal jurisdiction and the relationship with the due process clause of the Fourteenth Amendment. California by a one sentence jurisdictional statute, has conferred upon its courts the maximum amount of power to adjudicate issues, including those involving non-residents, as long as it is constitutionally permissible to do so. This Court has through prior decisions, attempted to set forth various guidelines, so as to discern limits on state power to act and adjudicate issues involving non-residents. The facts of this present the opportunity to this Court to additionally define the permissible limits of the process. Petitioner urges that this Court grant her petition.

Respectfully submitted,
MAGANA & CATHCART
By: JAMES J. McCARTHY
Attorneys for Appellant

APPENDIX "A"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KATHERINE MARIE AANESTAD as Administratrix of the Estate of RICHARD ERNEST SYKES, Deceased, Plaintiff, vs. BEECH AIRCRAFT CORPORATION, a corporation, TELEDYNE-CONTINENTAL MOTORS, a corporation and DOES I through XX, Defendants.	)	NO. 73-398-DWW ORDER DISMISSING COMPLAINT

This wrongful death action stems from the crash of a private aircraft allegedly due to the defective design of the plane by Defendant-Beech Aircraft Corporation. The accident occurred in New Mexico and decedent had resided in that state. All his heirs are residents of New Mexico and all of the property that he owned is situated there. Defendant Beech Aircraft Corporation was organized pursuant to the laws of Delaware and has its principal place of business in the State of Kansas. The administratrix, a California resident, is a

secretary in plaintiff's counsel's office ostensibly appointed in order to comply with the New Mexico wrongful death laws which require that an action for damages be brought through the personal representative of decedent's estate. The administratrix is not an heir at law of said decedent and it is apparent that she is being used as a nominal plaintiff in an attempt to qualify this case for trial in this district. Defendant-Teledyne-Continental Motors has not been served with process so far as our records indicate.

Defendant-Beech Aircraft Corporation has moved to dismiss this action as to it on the ground, inter alia, that this Court does not have personal jurisdiction over Defendant-Beech Aircraft. Agreeing, in essence, with defendant's position I state my reasons below.

The constitutionally mandated "minimum contacts" approach to personal jurisdiction is based on International Shoe v. Washington, 326 U.S. 310 (1945), McGee v. International Life Ins. Co., 355 U.S. 220 (1957), and Hansen v. Denckla, 357 U.S. 235 (1958). This approach stresses the quality of the

relationship between defendant and the state seeking to acquire personal jurisdiction over it. In applying this test one should: 1) look for the specific acts done by defendant that relate him to the forum state; 2) then, look to see whether the cause of action arises from these acts; and 3) finally, determine whether defendant's acts were such as to indicate a purpose on his part to rely on the privileges and protections of the forum's laws. If all of these factors point to sustaining jurisdiction, it is probably reasonable to expect defendant to appear and defend and, if so, the "minimum contacts" approach is satisfied. If one or more are missing, or do not point to sustaining jurisdiction, the case is less clear and jurisdiction may be unreasonable and improper.

California's basic jurisdictional statute is nothing more or less than the "minimum contacts" approach in a capsule: "A Court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Code Civ. Proc. §410.10.

The California Supreme Court recently discarded the second requirement listed above but in that case plaintiff was a California resident and was injured in California. Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893 (1969). Through its wholly owned subsidiaries, [however,] defendant Beech is engaged in a substantially greater volume of business in California than defendant in Buckeye Boiler, although Beech's subsidiaries are separate legal entities. The Empire Steel Corporation v. Superior Court, 56 C. 2d 823 (1961) decision cited by plaintiff is not helpful. While the parent's control over its California subsidiary was a significant factor in establishing jurisdiction, the cause of action, there for breach of contract, arose from such control and injured California residents. Here, the cause of action arose from activities in no way involving defendant's wholly owned subsidiaries and in no way injuring California residents. Cannon Manufacturing Co. v. Cudahy Packing Co., 267 U.S. 333 (1924). Cannon held that the ownership and control of a subsidiary corporation does not subject the parent corporation to jurisdiction within the state

where the subsidiary is engaged in business activity. The parent corporation was not "present" within the state wherein the wholly owned and controlled subsidiary carried on business, since parent and subsidiary were separate legal entities. The California Supreme Court distinguished Empire Steel from Cannon because in the former the cause of action sued upon was related to the activities of the subsidiary. As in Cannon, the case before this Court is to the contrary.

The complaint is dismissed as against all defendants because the plaintiff Aanestad is a sham party employed solely for the purpose of establishing jurisdiction in the State of California and venue would not lie in this district were it not for this sham plaintiff. The complaint is dismissed as against Beech Aircraft for the reason that it is not subject to the jurisdiction of the Courts of the State of California in this case.

DATED: This 17th day of July, 1973.

/s/ David W. Williams
DAVID M. WILLIAMS,
United States District Judge

APPENDIX "B"

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KATHERINE MARIE AANESTAD, as administratrix of the estate of RICHARD ERNEST SYKES, deceased, *Plaintiff-Appellant,* vs. BEECH AIRCRAFT CORPORATION, a corporation, TELEDYNE-CONTINENTAL MOTORS, a corporation, *Defendant-Appellee.*	No. 73-2810 MEMORANDUM

[June 20, 1974]

Appeal from the United States District Court
for the Central District of California

Before: BROWNING, WRIGHT and TRASK, Circuit Judges.

The sole issue on this appeal is whether the district court correctly determined that it had no personal jurisdiction over the defendant in a wrongful death action. We affirm.

The decedent, Richard Ernest Sykes, was a resident of New Mexico when a Beechcraft airplane in which he was a passenger crashed near Las Cruces, New Mexico, in January 1972. He was killed in the accident. Surviving him are his widow and two sons, all of whom were and are residents of New Mexico. The aircraft involved in the accident had never been owned or operated in California.

The airplane was virtually new, having been flown from the Beech company's manufacturing plant at Wichita, Kansas, to an aircraft dealer in Albuquerque and thence to the scene of the accident. Beech is a Delaware corporation with its principal place

of business in Wichita. It is not incorporated in California, nor is it licensed to do business there. It does not manufacture any aircraft nor aircraft components in California, nor does it own any manufacturing facilities or other real property in California.

Sykes' widow instituted a wrongful death action in the New Mexico state court, based upon the same airplane accident. In that suit she sought recovery from other parties, the owner of the plane and the pilot, but not against the manufacturer, Beech.

The plaintiff in the action before us is a legal secretary for the Los Angeles firm which instituted this action. She was appointed administratrix for the sole purpose of bringing this lawsuit, which is the only alleged asset of the decedent in California. Beech petitioned for removal from the state court to the district court and thereafter moved to dismiss, alleging lack of personal jurisdiction. The motion was granted.

Since the case was removed from a California court, the district court had personal jurisdiction over the defendant Beech only if the court from which the case was removed had such jurisdiction. *Freeman v. Bee Machine Co.*, 319 U.S. 448 (1943); *Block v. Block*, 196 F.2d 930, 933 (7th Cir. 1952).

California has adopted the "minimum contacts" approach to the problem of personal jurisdiction. The basic jurisdictional statute reads:

> "A Court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Code Civ. Proc. § 410.10.

Thus, the only issue to be resolved is whether an exercise of jurisdiction by a California court would violate the Due Process Clause of the Fourteenth Amendment.

A state may not acquire personal jurisdiction over a party without that party having certain "minimum contacts" with the forum state. Such minimum contacts are constitutionally required. *Hanson v. Denckla*, 357 U.S. 235 (1958), *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), and *International Shoe v. Washington*, 326 U.S. 310 (1945). Although there are varied formulations of the "minimum contacts" test for nonresidents, this Court has adopted the following approach:

(1) The nonresident defendant must do some act or consummate some transaction within the forum. It is not necessary that defendant's agent be physically within the forum, for this act or transaction may be by mail only. A single event will suffice if its effects within the state are substantial enough to qualify under Rule Three.

(2) The cause of action must be one which arises out of, or results from, the activities of the defendant within the forum. It is conceivable that the actual cause of action might come to fruition in another state, but because of the activities of defendant in the forum state there would still be a "substantial minimum contact."

(3) Having established by Rules One and Two a minimum contact between the defendant and the state, the assumption of jurisdiction based upon such contact must be consonant with the due process tenets of "fair play" and "substantial justice." If this test is fulfilled, there exists a "substantial minimum contact" between the forum and the defendant. The reasonableness of subjecting the defendant to jurisdiction under this rule is frequently tested by standards analogous to those of forum non conveniens.

L. D. Reeder Contractors v. Higgins Industries, 265 F.2d 768, 773-74 n.12 (9th Cir. 1959), quoting 47 Geo. L.J. 342, 351-52 (1958). Although *Perkins v. Benguet Consol. Mining Co.,* 342 U.S. 437 (1952), upheld jurisdiction where the cause of action was not an outgrowth of the activity relied upon to establish minimum contacts, *Reeder* limited the *Perkins* holding to the unusual facts there presented. *See also* von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis,* 79 Harv. L. Rev. 1121, 1144 (1966); Note, *Developments in the Law, State Court Jurisdiction,* 73 Harv. L. Rev. 909, 933 (1960).

Applying the above approach and analysis to the facts of this case, it is clear that the district court was correct in finding that there was no personal jurisdiction in California over defendant Beech. It is uncontradicted that defendant Beech is not incorporated in, or licensed to do business in, the State of California. The record indicates that Beech does not manufacture any aircraft or components of aircraft in California, nor does it own

any plants, or other real property in California. Appellant argues, however, that Beech is in fact doing business in California because Beechcraft West and its subsidiary, Mission Beechcraft, who sell, service, and distribute Beech aircraft, are California corporations which are wholly owned subsidiaries of Beech Holdings (a Kansas corporation), which is in turn a wholly-owned subsidiary of defendant Beech. Appellee argues that each of these corporations acts as a separate and distinct corporate entity and that neither was involved in the manufacture, servicing or sale of the aircraft whose crash gave rise to the present suit. The California corporations have not been named as defendants in this action.

We need not consider whether, or under what circumstances, the activities of a wholly-owned subsidiary subject the parent corporation to the jurisdiction of the state in which the subsidiary is incorporated or does business. *See Cannon Mfg. Co. v. Cudahy Packing Corp.*, 267 U.S. 333 (1925); *Farkas v. Texas Instruments, Inc.*, 429 F.2d 849 (1st Cir. 1970); *Hayashi v. Sunshine Garden Products, Inc.*, 285 F. Supp. 632 (W.D. Wash. 1967), *aff'd sub nom. Hayashi v. Red Wing Peat Corp.*, 396 F.2d 13 (9th Cir. 1968); *Empire Steel Corp. v. Superior Court*, 56 Cal. 2d 823, 366 P.2d 502 (1961). Even if Beech were charged with the activities of its subsidiaries in California, none of those activities had anything to do with the cause of action in the instant case. Thus, jurisdiction fails under rule 2 of the *Reeder* test. Nor are Beech's activities in California, if any, so pervasive that they justify jurisdiction in California of a cause of action not related to Beech's alleged California activities.[1]

Under the standard announced in *Reeder*, the district court was correct in holding that California courts could not, within the requirements of due process, exercise jurisdiction over this case. The action was properly dismissed, and the order of the district court is affirmed.

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[1]We read *Reader* to apply only where the contacts, if any, are "minimal." Where the contracts are pervasive, it is unclear whether the cause of action must be an outgrowth of those activities. We express no opinion on this question.

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APPENDIX "C"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 16 1974

U. S. COURT OF APPEALS CLERK

KATHERINE MARIE AANESTAD, as administratrix of the estate of RICHARD ERNEST SYKES, deceased, Plaintiff-Appellant, v. BEECH AIRCRAFT CORPORATION, a corporation, Defendant-Appellee.	No. 73-2810 ORDER DENYING REHEARING

Before: BROWNING, WRIGHT and TRASK, Circuit Judges.

The appellant's Petition for Rehearing has been considered by the court and is denied.

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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-291

KATHERINE MARIE AANESTAD, as Administratrix of the Estate of RICHARD ERNEST SYKES, deceased,

Petitioner,

vs.

BEECH AIRCRAFT CORPORATION,

Respondent.

On Peition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinions below are adequately set forth in Appendix A through Appendix C of the Petition. The opinions below are not reported.

Jurisdiction.

Petitioners state they seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1241(1). This is error and they must have intended to rely on 28 U.S.C. § 1254(1).

Question Presented.

Whether a state may, consistent with the due process clause of the United States Constitution, refuse to exercise jurisdiction over a non-resident defendant in an action brought by non-resident parties in interest on a non-forum related cause of action.

Statute Involved.

California Code of Civil Procedure, Title 5, Chapter 1, Article 1:

> § 410.10. [Jurisdiction exercisable]. A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Statement of the Case.

This action arises out of the crash of a Beechcraft Baron aircraft, FAA Registration No. N9328Q, on or about January 22, 1972 near Las Cruces, New Mexico. Plaintiff's decedent, Richard Ernest Sykes, was fatally injured in the crash.

At the time of his death the decedent was a resident of New Mexico, and left surviving as his heirs his wife and two sons, all of whom are, and were, residents of New Mexico. The aircraft involved in the crash was virtually brand new, having been flown from Beech's manufacturing facility in Wichita, Kansas where it was manufactured to an aircraft dealer, Cutter Fiying Service, in Albuquerque, New Mexico and from there to the scene of the accident at Las Cruces, New Mexico. [Clk. Tr. p. 250, lines 20-24.]

Beech Aircraft Corporation ("Beech") is a Delaware corporation with its principal place of business in Wichita, Kansas. Beech is neither incorporated in, nor licensed to do business within, the State of California. Beech does not manufacture any aircraft or components of aircraft in the State of California, nor does it own any plants, manufacturing facilities or real property within the State of California. [Clk. Tr. pp. 44-45, lines 25-5.]

The decedent's surviving widow, Laro Rebecca Sykes, on March 21, 1972, instituted a wrongful death action

in the District Court of Dona Ana County, New Mexico, to recover wrongful death damages for the death of her husband in the aforesaid crash. In this New Mexico action the decedent's wife sought recovery against Cutter Flying Service, the owner and operator of the aircraft at the time of the crash, and against the Estate of Stoes, the pilot of the aircraft, but not against defendant Beech. (Petition, App. B, p. 2.)

Apparently decedent's widow later determined to forum shop and split her wrongful death action, suing some of the defendants in New Mexico and suing Beech in California. In accordance with this plan, on or about January 18, 1973, a complaint was filed in the Superior Court of the State of California against defendant Beech. The plaintiff in the California action is Katherine Marie Aanestad, who sues as the personal representative of the heirs of Richard Ernest Sykes. Ms. Aanestad is a California resident and is employed as a secretary in the law office of counsel for plaintiffs. (Petition, App. B, pp. 2-3.) Beech was thereafter purportedly served with a copy of the complaint and summons by certified mail, addressed to it at its headquarters in Wichita, Kansas, and received by it on January 26, 1973.

The California complaint which is the subject of this Petition, like the New Mexico action, sought damages for the wrongful death of plaintiff's decedent, Richard Ernest Sykes. In the New Mexico suit the widow made no charge of any defects of design or manufacture of the aircraft but this became the basis of the California action. [Clk. Tr., pp. 1-10.]

On February 22, 1973 Beech filed a Petition and Bond for Removal Pursuant to 28 U.S.C. Section 1441 *et seq.*, and thereby removed this action to the United

States District Court for the Central District of California, where it was assigned to District Judge David W. Williams.

Against the background of the above factual record, *i.e.*, non-resident heirs and real parties in interest, a non-resident defendant and a crash which occurred in New Mexico, Beech, on March 27, 1973, filed a Motion to Dismiss Plaintiff's Complaint, alleging, *inter alia*, that under controlling California authorities the District Court lacked personal jurisdiction over defendant Beech in the within action.

Following notice of the motion plaintiff's attorneys initiated discovery against defendant Beech, which discovery included sending a set of interrogatories to Beech and taking the deposition of J. A. Elliott, a Vice President and Director of Beech. On July 9, 1973 Beech's Motion to Dismiss was orally argued before the Honorable David W. Williams; and on July 17, 1973 Judge Williams dismissed the complaint in a four page written Order.[1]

Plaintiff appealed to the United States Court of Appeals for the Ninth Circuit from the Order and Judgment of Dismissal of the District Court. On June 20, 1974 the United States Court of Appeals for the Ninth Circuit, in a Memorandum Decision by Circuit Judges Browning, Wright and Trask, affirmed the District Court's Order of Dismissal.[2] Plaintiff's Petition for a Rehearing was denied July 16, 1974, and this Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit followed.

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[1]The District Court's Order appears as Exhibit "A" to the Petition.

[2]The Court of Appeals Memorandum Opinion appears as Exhibit "B" to the Petition.

ARGUMENT.

Petitioner's Petition ignores the fact that it is not the purpose and function of a writ of certiorari to give the defeated party in the Court of Appeals another hearing. As is amply demonstrated *infra*, this case is not an appropriate case for the granting of a writ of certiorari under the guidelines set forth by this Court. Moreover, the decision below is in full accord with all of the Constitutional guidelines established by this Court with respect to in personam jurisdiction, and, in addition, rests on separate and adequate non-federal state grounds.

I.

The Petition Should Be Denied in That the Decisions Below Are Supported by Adequate and Independent State Grounds.

This action was filed in the California Superior Court on or about January 18, 1973, and thereafter removed to the United States District Court for the Central District of California. The grounds for removal were diversity of citizenship and an amount in excess of $10,000. It is the rule that in diversity actions the District Court's jurisdiction is derivative from that of the State Court in which the District Court sits and must be tested under the guidelines established by the state. *Freeman v. Bee Machine Co.*, 319 U.S. 448 (1943); *Arrowsmith v. United Press International*, 320 F.2d 219 (2d Cir. 1963); *Block v. Block*, 196 F.2d 930, 933 (7th Cir. 1952); *Electric Regulator Corp. v. Sterling Extruder Corp.*, 280 F.Supp. 550 (D. Conn. 1968).

The California statute relating to personal jurisdiction is California Code of Civil Procedure Section 410.10 which states:

> "A court of this state *may* exercise jurisdiction on any basis *not inconsistent* with the Constitution of *this state* or of the United States." Cal. Code of Civ. Proc. § 410.10. (Emphasis supplied.)

Since the statute does not require the exercise of jurisdiction by California in all cases where jurisdiction might arguably be permitted under the Constitution (the statute reads "may exercise" not "shall exercise"), it is necessary to review California jurisdictional decisions to determine its internal policy on the exercise of jurisdiction.

By its rulings, the California Supreme Court has made it abundantly clear that personal jurisdiction in California can be sustained only where the defendant has "contacts" with California and where, under the circumstances of the particular case, it is "reasonable" to assert jurisdiction, *e.g.*, *Buckeye Boiler Co. v. Superior Court*, 71 Cal.2d 893, 80 Cal.Rptr. 113 (1969); *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 1 Cal.Rptr. 1 (1959); *L. D. Reeder Contractors of Ariz. v. Higgins Industries*, 265 F.2d 768 (9th Cir. 1959).

Although there are numerous factors which have caused California courts to decline jurisdiction, three factors present here require, under California law, a finding of no jurisdiction. They are:

(1) The accident which gave rise to this action occurred in the State of New Mexico and the cause of action asserted has absolutely no relation to any business purportedly carried on in California by anyone.

(2) The real parties in interest, the decedent's heirs, are non-residents of California, being residents of New Mexico, and as such have no more connection with California than the cause of action upon which they sue.

(3) Similar litigation has been instituted by said real parties in interest in New Mexico, the witnesses are located in New Mexico and other factors in general make suit in California "unfair" and "unreasonable".

In a number of cases both the California courts and the Ninth Circuit, applying California law, have consistently rejected attempts to expand California jurisdiction to disputes which do not have any connection with California.

In *Fisher Governor Co., supra,* for example, the party over whom jurisdiction was sought had regularly sold its products in California through intermediaries and was listed in the telephone book. The company also promoted the sale of its products through these intermediaries by the use of sales catalogs and a commission program. However, the injury giving rise to the suit had occurred elsewhere, as here, and the product in question, as here, had never been sold or used in California. The California Supreme Court, faced with these jurisdictional facts, noted that the;

> "[c]auses of action arose in Idaho, the defective equipment was not sold in this state, neither of the decedents was a California resident, and none of the plaintiffs are California residents." 53 Cal. 2d 222, 224; 1 Cal.Rptr. 1, 3.

Under such circumstances the California Supreme Court determined that it would not assert jurisdiction over the non-resident defendant indicating that to hold

otherwise would permit any corporation that promoted the sale of its goods on a nationwide basis to suit in California, and, indeed, anywhere in the United States, without regard to any other considerations. 53 Cal.2d 222, 225; 1 Cal.Rptr. 1, 3.

The petitioners attempt to argue that California's policy cannot pass federal constitutional muster in light of this Court's opinion in *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952). They are in error. Although *Perkins* presents a unique factual situation where the forum chosen was the only available forum, a factor not present here, this Court nonetheless noted that assumption of jurisdiction was not required under the federal Constitution and that the circumstances under which the courts of a state will assume jurisdiction is a question reserved for the state.

> "Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. *Without reaching that issue of state policy,* we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to *take or decline jurisdiction* of the corporation in this proceeding." 342 U.S. 437, 448. (Emphasis Supplied.)

In *Fisher Governor Co., supra,* the California Supreme Court expressed the policy of California with respect to the exercise of jurisdiction over non-resident defendants on non-forum related causes of action. The Ninth Circuit, in *L. D. Reeder Contractors of Ariz. v. Higgins Industries,* 265 F.2d 768, 773-774, properly expressed and applied California's policy and properly

stated the California rule. Accordingly, the writ should be denied because the decisions below are, as they must be, faithful to California law and because the California rule is consistent with the federal Constitution.

II.

The California Requirement That the Exercise of Jurisdiction Be "Reasonable" Under the Jurisdictional Facts of the Case Required a Finding of No Personal Jurisdiction Below; and, in Addition, This California Test Which Was Properly Applied Herein Is an Additional Adequate State Ground Supporting the Decision Below.

As noted previously under the prevailing California authorities two requirements must be satisfied to obtain in personam jurisdiction in California. The first requirement is that there be contact by the defendant with the forum state. The second requirement is that jurisdiction be "reasonable" under the jurisdictional facts of the case.

In the leading California case of *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893; 80 Cal.Rptr. 113 (1969), the California Supreme Court stated:

> "Once it is established that the defendant has engaged in activity of the requisite quality and nature in the forum state and that the cause of action is sufficiently connected with this activity, the propriety of an assumption of jurisdiction depends upon a balancing of the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction. (*McGee v. International Life Ins. Co., supra,* 355 U.S. 220,

223 [2 L.Ed.2d 223, 226]; *Fisher Governor Co. v. Superior Court, supra,* 53 Cal.2d 222, 225-226.) In other words, once the threshold of sufficient activity by the defendant has been passed, the question of the propriety of subjecting the defendant to the jurisdiction of the forum involves both a consideration of fairness to the plaintiff [citation omitted] and a determination of whether, from a standpoint of the logical and orderly distribution of interstate litigation, the forum state is what Professor Ehrenzweig has termed a 'forum conveniens' . . . See Ehrenzweig, *The Transient Rule of Personal Jurisdiction. The Power Myth and Forum Conveniens* (1956), 65 Yale L.J., 289, 312." 71 Cal.2d 893, 899; 80 Cal.Rptr. 113, 118.

The above quotation makes it clear that federal courts applying California law must weigh forum non conveniens factors when undertaking a jurisdictional analysis. This fact is made very clear by the opinion of the California Supreme Court in *Fisher Governor, supra,* which preceded *Buckeye Boiler. Fisher Governor* listed six forum non conveniens factors which must be balanced in any determination of the propriety of asserting personal jurisdiction. They are as follows:

"The interest of the state in providing a forum for its residents [citation omitted] or in regulating the business involved [citation omitted]; the relative availability of evidence and the burden of defense and prosecution in one place rather than another [citations omitted]; the ease of access to an alternative forum [citation omitted]; the avoidance of multiplicity of suits and conflicting ad-

judications [citation omitted]; and the extent to which the cause of action arose out of defendant's local activities [citations omitted]; are all relevant to this inquiry." 53 Cal.2d 222, 225-226; 1 Cal.Rptr. 1, 3.

In the instant case no California residents are involved, and thus California has no interest in providing a forum. Here, the business which forms the basis of the action was undertaken in Kansas and in New Mexico; California has no interest or ability to regulate the same. In addition, evidence is obviously more available in New Mexico, where the crash occurred and where the plaintiffs reside, and the burden on Beech of defending in California, a jurisdiction removed from the physical evidence, militate against jurisdiction in California. Each of these factors standing alone support a finding of no jurisdiction and in combination compel a conclusion that assertion of jurisdiction over Beech in California would be unreasonable.

There is nothing in the United States Constitution and its due process clause which compels California to exercise jurisdiction in a case such as this. As noted by this Court in *Perkins v. Benguet Consolidated Mining Co., supra*:

> "The suggestion that federal due process *compels* the State to open its courts to such a case has no substance. 'Provision for making foreign corporations subject to service in the State is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Still less is it incumbent upon a State in furnishing such process to make the jurisdiction over the foreign corporation wide enough to in-

clude the adjudication of transitory actions not arising in the State.' "

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 440, 441.

The courts below properly applied California law to this case and properly found that asserting jurisdiction over Beech in California on this New Mexico cause of action would be "unreasonable". California is patently inconvenient for the trial of this action. The California rule requiring analysis of forum non-conveniens factors in determining the reasonableness of in personam jurisdiction is not repugnant to the United States Constitution and is consistent with a state policy properly adopted by the California courts.

No federal question is presented by the petition and it should, therefore, be denied.

III.

Under Controlling California Authorities the Activities of Third Generation Subsidiaries of Beech in California Could Not Be Considered on the Issue of Whether Beech Was Doing Business in California and No Federal Question Is Presented by the California Rule; Accordingly, This Court's Writ Should Not Issue.

As a second argument in favor of the issuance of this Court's writ, petitioners attack the Ninth Circuit's determination that the activities of certain third and fourth generation subsidiaries of Beech in California could not, under controlling California authority, be considered the activities of Beech.

As previously noted, defendant Beech is a Delaware corporation with its principal place of business

in Wichita, Kansas. [Clk. Tr., p. 44, lines 25-27.] It is neither incorporated in nor licensed to do business within the State of California. It does not manufacture any aircraft or components of aircraft in the State of California, nor does it own any plants, manufacturing facilities or real property within the State of California. [Clk. Tr., pp. 44-45, lines 31-35.] Beech owns all of the stock of Beech Holdings, Inc., a Kansas corporation. Beech Holdings, Inc., in turn, owns all of the stock of Beechcraft West, a California corporation, which, in turn, operates three dealerships in California. [Clk. Tr., p. 45, lines 10-22.] However, neither Beech Holdings, Inc. nor Beechcraft West were in any way involved with the manufacture, sale or maintenance of the aircraft which crashed, and are not defendants in the action.

Recognizing that there is a dearth of activity of Beech in California, petitioners argued below that Beech is in fact doing business in California because its third generation subsidiary Beechcraft West sells, services and distributes Beech aircraft in California and is a California corporation and a wholly owned subsidiary of Beech Holdings, Inc., a Kansas corporation, which is, in turn, a wholly owned subsidiary of defendant Beech. (Petition, App. B, p. 4.)

Although petitioners seek to bootstrap this issue into one of constitutional magnitude, no federal question is presented. The controlling California cases are *Empire Steel Corp. v. Superior Court,* 56 Cal.2d 823, 17 Cal.Rptr. 150 (1961) and *Pope v. National Aero Finance Co.,* 220 Cal.App.2d 709, 33 Cal.Rptr. 889 (1963).

In *Empire Steel* the California Supreme Court made it clear that jurisdiction over the parent could be main-

tained where the parent was the *alter ego* of its California subsidiary, a fact not found below and not present here. The California Supreme Court also found that the non-resident parent had manipulated its California subsidiary to the detriment of its creditors and had caused it to remain in business and to make certain contracts at a time when the parent knew the subsidiary was, in fact, insolvent. It was because of these acts of the parent in California and not because of the mere presence of its subsidiary that the Court permitted the assertion of jurisdiction.

Similarly, the California District Court of Appeal, in *Pope,* predicated its jurisdiction over the non-resident parent, National Aero Finance Company, not because of any activities of its subsidiary in California but because of its own activities.

As the District Court of Appeal, in *Pope,* notes:

> "Among the other factors considered by the court [in *Empire Steel*] in concluding that the foreign corporation had engaged in activities creating substantial contacts in California *in relation to the claim asserted* were the following: Keeping the subsidiary in business beyond a period safe for persons dealing with the subsidiary; the residence of the president of the parent corporation in Caifornia; *the consequences within California of the activities of the parent corporation in the foreign state;* the occurrence of the alleged breach of contract, which was the subject of the pending action, in California; the fact that the contract was entered into and was to be performed in

> California; and *the manifest interest of California in providing a forum for local creditors injured by alleged frauds effected through a California subsidiary.* It is significant to note that, in *Empire Steel Corp.*, the Supreme Court does not consider continuous activity resulting in substantial contact as the necessary criterion for determining whether a foreign corporation is doing business in this state, but declares that '*the analysis of the activities of a foreign corporation should not be considered merely quantitatively, but in terms of their* "quality and nature", and their connection with *the obligations sued upon.*'" 220 Cal.App.2d 709, 718. (Emphasis supplied.)

Accordingly, the decision of the Court of Appeal was consonant with this Court's ruling in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925), the decision of the California Supreme Court in *Empire Steel Co. v. Superior Court, supra,* and the decision of the California District Court of Appeal in *Pope v. National Aero Finance Co., supra.* The decision below is correct and no federal question is presented because California can, consistent with the due process clause of the Constitution of the United States, determine for itself the circumstances under which it will or will not consider the activities of a subsidiary to be those of the parent.

IV.

Conclusion.

This Court has stated that certiorari should not be granted to review decisions resting upon adequate and independent non-federal state grounds even in situations where the court below may have summoned to its support an erroneous view of federal law. *Radio Station WOW v. Johnson*, 326 U.S. 120, 129 (1944). It is clear that the court below properly applied controlling California authorities to the facts of this case in finding a lack of in personam jurisdiction over Beech. It is clear that the Constitution of the United State does not compel California to exercise jurisdiction in cases such as this. Whether California will or will not exercise jurisdiction is left for California to decide—the issue was properly decided in this case under controlling California decisions.

No federal question is presented by the petition and, therefore, it should be denied.

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Respectfully submitted,

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